

1 **RULE 140.1**

2
3 **REQUIREMENTS FOR MANAGING GENERAL PARTNER**
4 **OF LIMITED PARTNERSHIP FOR WELFARE EXEMPTION**
5 **FOR LOW-INCOME HOUSING PROPERTIES**
6

7
8 (a) Definitions. The definitions set forth in this regulation shall govern the construction of
9 Revenue and Taxation Code section 214, subdivision (g), which provides the requirements
10 for the welfare exemption for low-income housing properties owned by a limited partnership
11 in which the managing general partner is an eligible nonprofit corporation or eligible limited
12 liability company.
13

14 (1) "General partner" means "general partner" as defined by section 15611, subdivision (n)
15 of the Corporations Code.
16

17 (2) "Limited partner" means "limited partner" as defined by section 15611, subdivision (q)
18 of the Corporations Code.
19

20 (3) "Limited partnership" means a "limited partnership" as defined by section 15611,
21 subdivision (r) of the Corporations Code, or a "foreign limited partnership" as defined by
22 section 15611, subdivision (l) of the Corporations Code.
23

24 (4) "Limited partnership agreement" means any valid written agreement of the partners as to
25 the affairs of a limited partnership and the conduct of its business, including all
26 amendments thereto.
27

28 (5) "Majority in interest of the general partners" means more than 50 percent of the interests
29 of the general partners, and does not include the interests of any of the limited partners,
30 in the current profits derived from business operations of the limited partnership.
31

32 (6) "Managing general partner" means a general partner that:
33

34 (A) is a nonprofit corporation, or an eligible limited liability company meeting the
35 requirements of Revenue and Taxation Code section 214, designated in the
36 limited partnership agreement as the "managing general partner" of the limited
37 partnership;
38

39 (B) is authorized to receive a partnership management fee, or similar form of
40 compensation, payable in the amount and the manner set forth in the limited
41 partnership agreement or other agreement executed by all of the general
42 partners for performing its duties;
43

44 (C) has "material participation," as defined in subdivision (a)(7) below, in the
45 control, management, and direction of the limited partnership's business; and
46

47 (D) the officers and directors of the for-profit general partners, for-profit limited
48 partners, or any of its for-profit affiliates, do not, as individuals or

1 collectively, have a controlling vote or majority interest in the nonprofit
2 managing general partner.

3
4 (7) “Material participation” means that the limited partnership agreement or other
5 agreement executed by all of the general partners expressly provides that the
6 managing general partner:

7
8 (A) has a right to vote in all the "major decisions," defined in subdivision (a)(8)
9 below;

10
11 (B) performs “substantial management duties,” defined in subdivision (a)(10)
12 below;

13
14 (C) directly, or indirectly under its supervision, manages the limited partnership;

15
16 (D) annually conducts a physical inspection of the low-income housing property
17 to ensure that the property is being used as low-income housing and meets all
18 of the requirements set forth in Regulation 140; and

19
20 (E) annually submits a certification to the county assessor for the county in which
21 the property is located that the low-income housing property meets all of the
22 requirements set forth in Regulation 140.

23 .

24
25 (8) "Major decisions" means those acts, if any, that require a vote of a majority in interest
26 of the general partners.

27
28 (9) “Partner” means a limited or general partner.

29
30 (10) "Substantial management duties" means that the managing general partner actually
31 performs five or more of the following partnership management duties on behalf of
32 the limited partnership:

33
34 (A) rents, maintains and repairs the low-income housing property, or if such duties
35 are delegated to a property management agent, participates in hiring and
36 overseeing the work of the property management agent;

37
38 (B) participates in hiring and overseeing the work of all persons necessary to
39 provide services for the management and operation of the limited partnership
40 business;

41
42 (C) executes and enforces all contracts executed by the limited partnership;

43
44 (D) executes and delivers all partnership documents on behalf of the limited
45 partnership;

- 1 (E) prepares or causes to be prepared all reports to be provided to the partners or
2 lenders on a monthly, quarterly, or annual basis consistent with the
3 requirements of the limited partnership agreement;
4
5 (F) coordinates all present and future development, construction, or rehabilitation
6 of low-income housing property that is the subject of the limited partnership
7 agreement;
8
9 (G) monitors compliance with all government regulations and files or supervises
10 the filing of all required documents with government agencies;
11
12 (H) acquires, holds, assigns or disposes of property or any interest in property;
13
14 (I) borrow money on behalf of the limited partnership, encumbers limited
15 partnership assets, places title in the name of a nominee to obtain financing,
16 prepays in whole or in part, refinances, increases, modifies or extends any
17 obligation;
18
19 (J) pays organizational expenses incurred in the creation of the partnership and all
20 operational expenses;
21
22 (K) determines the amount and timing of distributions to partners and establishes
23 and maintains all required reserves; and
24
25
26 (L) ensures that charitable services or benefits, such as vocational training,
27 educational programs, childcare and after-school programs, cultural activities,
28 family counseling, transportation, meals, and linkages to health and/or social
29 services are provided or information regarding charitable services or benefits
30 are made available to the low-income housing tenants.
31
32 (b) The managing general partner must maintain records and documents evidencing the duties
33 performed by the managing general partner. Such records and documents may include, but
34 are not limited to:
35
36 (1) accounting books and records;
37 (2) tax returns;
38 (3) budgets and financial reports;
39 (4) reports required by lenders;
40 (5) documents related to the construction or rehabilitation of real property;
41 (6) legal documents such as contracts, deeds, notes, leases, and deeds of trust;
42 (7) documents related to complying with government regulations and filings;
43 (8) documents related to property inspections;
44 (9) documents related to charitable services or benefits provided or the information
45 provided regarding such services or benefits;
46 (10) reports prepared for the partners;
47 (11) bank account records;
48 (12) audited annual financial statement of the limited partnership; and

1 (13) property management agreement.

2
3 (c) Substitution of Managing General Partner. A limited partnership in which the managing
4 general partner is an eligible nonprofit corporation or an eligible limited liability company
5 that has qualified for the welfare exemption for low-income housing may allow a substitution
6 of its managing general partner by another eligible nonprofit corporation or eligible limited
7 liability company without affecting the organizational qualification for the welfare exemption
8 provided that:

9
10 (1) the limited partnership agreement authorizes the withdrawal or removal of the managing
11 general partner and the admission of a substitute managing general partner on the same
12 effective date and such admission of the substituting managing general partner into the
13 limited partnership is in compliance with the requirements of section 15641 of the
14 Corporations Code; and

15
16 (2) the substitute managing general partner meets all of the requirements of a managing
17 general partner set forth in subdivision (a)(6) above.

18
19 (d) Delegation of Authority Clause. If the limited partnership agreement contains a delegation of
20 authority clause, such clause must provide either that:

21
22 (1) the managing general partner may not delegate any of its substantial management duties
23 defined in (a)(10) above; or

24
25 (2) the managing general partner may delegate its substantial management duties, defined in
26 (a)(10) above, to persons who, under its supervision, may perform such duties for the
27 partnership subject to the supervision by the managing general partner. If the managing
28 general partner elects to delegate one or more of its substantial management duties, the
29 managing general partner must demonstrate that it is actually supervising the
30 performance of the delegated duties.

31
32 (e) Certification Requirements. The limited partnership must file for and receive a supplemental
33 clearance certificate from the Board as provided in Regulation 140.2.

34
35 (f) The provisions of this regulation shall apply prospectively to claims or applications for the
36 welfare exemption under Revenue and Taxation Code section 214 and supplemental
37 clearance certificates under Regulation 140.2, filed on or after the effective date of this
38 regulation. For supplemental clearance certificates issued prior to the effective date of this
39 regulation, claimants shall have until the January 1, 2007 lien date to be in compliance with
40 this regulation unless the Board has issued a written notice of noncompliance. If the Board
41 has issued such notice, claimant shall have 90 days from the date of the notice to comply
42 with this regulation. Upon written request for an extension of time prior to the expiration of
43 the 90-day period to comply, the Board shall grant a reasonable amount of time to comply
44 with this regulation.

45
46 Authority: Section 15606, Government Code.

47
48 Reference: Section 214, Revenue and Taxation Code.

1
2 Rules/140.1/Rule 140.1